MANOCARAN NAVARATNASINGAM

v.

TAN YEW SIN & ORS.

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMED J
[CIVIL SUIT NO. 113/77]
20 OCTOBER 1982

LAND LAW: *Private caveat - Application for removal - Whether plaintiff had binding contract to purchase land - Whether plaintiff can lodge second caveat after the first had lapsed.*

The 2nd defendant, owner of the land concerned, gave an option to the 1st defendant, a housing agent, to sell the land and house "subject to contract". The 1st defendant gave an oplian to the plaintiff to purchase the property "Subject to contract". The plaintiff exercised the option to purchase and paid 10% of the agreed price. The 2nd defendant subsequently executed an agreement of sale and purchase with the 3rd defendant, who paid the whole of the purchase price and took vacant possession of the property.

The plaintiff, on being refunded the 10% he had paid, entered private caveat over the property. The caveat lapsed and was removed. He then entered a second caveat, which was later extended by the Court.

The 3rd defendant applied to have the private caveat removed.

Held:

[1] The plaintiff had no binding contract to purchase the property as the option given to him was conditional upon and subject to a formal contract being drawn up. He therefore had no caveatable interest in the property.

[2] The first caveat having been removed was extinguished forever and a second caveat based on the same ground cannot maintained.

[Application allowed.]

Cases referred to:
Low Kar Yit & Ors. v. Mohamed Isa & Anor. [1963] 29 MLJ 165
Tai Tong Realty Co. (Pte) Ltd. v. Galstaun & Anor. [1973] 2 MLJ 7
Arul Chandran v. Tara Rajaratnam [1979] 2 MLJ 172

Legislation referred to:
Contracts Act 1950 (Act 136), s. 7

For the plaintiff - S.S. Gill; M/s. Nijar & Nijar
For the 1st defendant - R. Vallipuram; M/s. Reginald Vallipuram & Co.
For the 2nd defendant - Kan Yeng Lam; M/s. Allen & Gledhill
For the 3rd defendant - John Ang Soon Ho; M/s. John Ang & Jega

JUDGMENT

Mohd. Yusoff Mohamed J:

This is an application by the 3rd defendant to remove a private caveat lodged by the plaintiff in respect of a piece of land C.T. 12580, lot 6536, township of Johore Bahru. The facts by chronological order according to affidavits are these:

On 19 November 1976, the 2nd defendant, as owner of the land, gave an option to a housing agent in Singapore, the 1st defendant, to sell the land with a house on it on terms referred to as "subject to contract". The option was valid until 31 December 1976.

On 22 November 1976, the 1st defendant consequently gave an option to purchase the said property to the plaintiff, also on the terms that the sale was "subject to contract". This option was to expire on 25 December 1976.

On 13 December 1976, the plaintiff exercised his option to purchase and paid 10% of the agreed price of the land according to the option.

On 28 December 1976, the owner, the 2nd defendant executed an agreement with the 3rd defendant (applicant) selling the property to the applicant at a price of RM65,000. By 4 January 1977, the applicant paid the whole of the purchase price to the 2nd defendant and took vacant possession of the property.

On 5 January 1977, the housing agent's solicitors acting on instructions from the 1st defendant returned the plaintiff's cheque, of 10% paid as part of the purchase price of the property to the plaintiff, indicating that the 1st defendant did not wish to proceed with the sale.

On 8 January 1977, the plaintiff lodged his first caveat over the property. This caveat lapsed and was removed by the Registrar of Titles.

On 14 April 1977, the plaintiff again lodged his second caveat. This caveat was extended by the Court by an Order dated 20 July 1977 and is still subsisting.

The two questions at issue here are:

i) whether the plaintiff has a binding contract to purchase the property referred to in his option dated 22 November 1976, and

ii) whether the plaintiff can validly lodge a second caveat over the property after the first one has lapsed.

On the first issue, a similar question came before Gill J (as he then was) in *Low Kar Yit & Ors. v. Mohamed Isa & Anor*. [1963] 29 MLJ 165. The option there was subject to "formal contract to be drawn-up". The option was exercised by the plaintiff but there was refusal to complete by the defendant. Gill J's decision in the case rested on s. 7 of the Contracts (Malay States) Ordinance 1950, now Contracts Act 1950, Act 136. Section 7 of the Act states:-

> In order to convert a proposal into a promise the acceptance must:
>
> (a) be absolute and unqualified;
>
> (b) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in that manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

Upon reviewing a series of authorities, the Judge came to the conclusion at p. 172 that:

> The option on the face of it was clearly conditional upon and subject to 'a formal contract to be drawn up and agreed upon' between the parties, so that the exercise of the option amounted to nothing more than an agreement to enter into an agreement which, of course, has no legal effect.

In *Tai Tong Realty Co. (Pte) Ltd. v. Galstaun & Anor*. [1973] 2 MLJ 7, the meaning and effect of the option in respect of sale of land granted with the expression "subject to contract" was decided by Choor Singh J, who held that:

> as the sale was clearly subject to contract and as no formal contract had been signed by the parties there was no binding agreement between them, the plaintiffs were therefore not entitled to the injunction which they sought.

The same case went up on appeal to the Singapore Court of Appeal reported in [1973] 2 MLJ 95 in which Wee Chong Jin CJ, commenting on the contract said:-

> The expression 'subject to contract' is so well known and has acquired so definite a meaning in relation to sale of land that unless the facts and circumstances are so very strong and exceptional its effect in law is that there is no binding contract of sale but a mere conditional contract of sale, the condition under the expression being that the parties agree to enter into another contract.

Following these decisions, in my judgment, the plaintiff has no binding contract to purchase the property referred to in his option dated 22 November 1976 and therefore has no caveatable interest in it.

On the second issue, the same question of conflicting caveats came up before Syed Othman J (as he then was) in *Arul Chandran v. Tara Rajaratnam* (1979) 2 MLJ 172, where at p. 174 he said:

> In dealing with this point, I need only advert to the judgment of Syed Agil Barakbah J, in *Damodaran v. Vasudeva* where at p. 129 he discussed several authorities. He referred to *K.I. Muhiuddeen Rawther v. KEP Abdul Kassim* where Ong J (as he then was) said that the extinction of a caveat is final and irrevocable. It seems to be established law that the Court has no power to remove, renew or extend a caveat after its lapse. I should add if it is based on the same claim. Under s. 326(2) of the National Land Code the power to extend the life of the caveat lies with the Court. The respondent ignored the Collector's notice to remove the caveat. She did not apply to the Court for extension. Applying the above principle, the removal by the Collector has the effect of extinguishing the caveat.

The facts here are similar to *Arul Chandran v. Tara Rajaratnam's* case except that the plaintiff here applied for extension of the first caveat but later withdrew the application from the Court. This, to my mind, makes no difference in law. In this event, I am in agreement with the decision of Syed Othman J and hold that the first caveat lodged by the plaintiff having been removed is extinguished forever and a second caveat based on the same ground cannot be maintained.

I therefore find that this application succeeds and order that the caveat No.50 Folio 13 dated 14 April 1977 be removed from the Registry title of this land. Consequential orders in terms of application and costs to the applicant to be taxed.

Also found at [1983] 1 CLJ 205